

1 UNITED STATES DISTRICT COURT

2 NORTHERN DISTRICT OF WEST VIRGINIA

3 United States of America,

4 Plaintiff,

5 VS.

CRIMINAL ACTION NO.

6 3:23-cr-6

7 Robert F. Crosson,

8 Defendant.

9 - - -

10 Proceedings had in the plea hearing of the above-styled
11 action on June 9, 2023, before Honorable Robert W. Trumble,
Magistrate Judge, at Martinsburg, West Virginia.

12 - - -

13 APPEARANCES:

14 On behalf of the United States of America:

15 DeMarr Moulton
16 Assistant United States Attorney
United States Attorney's Office
700 Grant Street, Suite 4000
17 Pittsburgh, PA 14219
412.894.7434

18
19 On behalf of the Defendant:

20 Kristen M. Leddy
Assistant Federal Public Defender
21 Federal Public Defender's Office
651 Foxcroft Avenue, Suite 202
22 Martinsburg, WV 25401
304.260.9421

23
24 The defendant was present in person.

25 Proceedings recorded utilizing tape.
Transcript produced by computer-aided transcription.

1 Friday Morning Session,
2 June 9, 2023, 11:19 a.m.

3 - - -

4 THE CLERK: This is the case of United States of
5 America versus Robert F. Crosson, Criminal Number 3:23-CR-6,
6 defendant one. The defendant is present in person.

7 Would the parties please note your appearance for the
8 record.

9 MR. MOULTON: DeMarr Moulton, Special Assistant
10 United States Attorney in this district, for the government.

11 MS. LEDDY: Kristen Leddy, Assistant Federal Public
12 Defender, for the defense.

13 THE COURT: All right. Good morning, everyone.
14 We're scheduled for a binding plea to an indictment this
15 morning.

16 Ms. Leddy, it's my understanding that Mr. Crosson
17 desires to plead guilty to the charge contained in Count 1 and
18 2 of the original indictment; is that correct?

19 MS. LEDDY: That's correct, Your Honor.

20 THE COURT: Thank you.

21 Mr. Crosson, would you please stand, raise your right
22 hand, and be sworn by the clerk.

23 (Defendant sworn.)

24 THE COURT: Mr. Crosson, if you would pull that
25 microphone right up in front of you and speak directly into the

1 microphone when responding to my questions in a nice loud voice
2 so we have a clear record. Can you do that for me?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Thank you.

5 Sir, do you understand that you are under oath, and
6 if you answer any of my questions falsely, your answers may
7 later be used against you in another prosecution for perjury or
8 for making a false statement?

9 THE DEFENDANT: Correct.

10 THE COURT: Sir, do you understand that if you lie,
11 it may result in a higher sentence for you?

12 THE DEFENDANT: Correct.

13 THE COURT: During the course of this hearing, I'm
14 going to be asking you several questions. At any point you
15 should feel free to ask questions, ask for an explanation if
16 you do not understand my question, or ask me to pause the
17 proceedings so that you may confer with your attorney before
18 responding. Do you understand, sir?

19 THE DEFENDANT: Correct.

20 THE COURT: Would you state your full name for the
21 record, please.

22 THE DEFENDANT: Robert Crosson.

23 THE COURT: Mr. Crosson, how old are you?

24 THE DEFENDANT: 60.

25 THE COURT: And how much education have you had, sir?

1 THE DEFENDANT: Associate's degree.

2 THE COURT: So you can read, write, and understand
3 English?

4 THE DEFENDANT: Correct.

5 THE COURT: Have you recently been under the care of
6 a doctor, a psychiatrist, or other medical professional for any
7 serious physical or mental illness, including treatment for an
8 addiction to drugs or alcohol?

9 THE DEFENDANT: Yes.

10 THE COURT: Does any of the treatment that you
11 received affect your ability to understand the indictment that
12 was filed against you?

13 THE DEFENDANT: No.

14 THE COURT: Does it affect your ability to read and
15 understand the plea agreement that was offered by the
16 government?

17 THE DEFENDANT: It does not. It does not.

18 THE COURT: Does it affect your ability to
19 communicate with your attorney concerning the charges contained
20 in the indictment and any defenses thereto?

21 THE DEFENDANT: No.

22 THE COURT: Did it affect your ability to communicate
23 with your attorney concerning the terms and conditions as set
24 forth in the plea agreement offered by the government?

25 THE DEFENDANT: No.

1 THE COURT: Are you currently using any form of a
2 controlled substance or any medication or alcohol that might
3 affect your ability to understand this proceeding today?

4 THE DEFENDANT: No.

5 THE COURT: Ms. Leddy, you've been dealing with
6 Mr. Crosson. Do you have any reason to question the
7 competence?

8 MS. LEDDY: No, Your Honor.

9 THE COURT: Mr. Crosson, are you here today to enter
10 a guilty plea as part of a written plea agreement?

11 THE DEFENDANT: Yes.

12 THE COURT: Mr. Crosson, I find that you are
13 competent and capable of entering an informed plea.

14 Sir, my name is Robert Trumble. I am a United States
15 Magistrate Judge. You are charged with a felony offense. You
16 have the right to have this plea taken by an Article III Judge,
17 sometimes called a District Judge. Only you can give up that
18 right, and I can only hear your plea if you agree to it by
19 signing a waiver.

20 Now, I have on my bench a waiver that appears to bear
21 your signature. First of all, sir, did you in fact sign this
22 waiver?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you discuss it with Ms. Leddy before
25 you signed it?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand the purpose for the
3 waiver is to allow me to hear your plea today; is that correct?

4 THE DEFENDANT: Correct.

5 THE COURT: Did anyone force or pressure you into
6 signing the waiver, sir?

7 THE DEFENDANT: No.

8 THE COURT: Ms. Leddy, is it your understanding that
9 your client agrees to the waiver?

10 MS. LEDDY: Yes, Your Honor.

11 THE COURT: I find that the waiver has been properly
12 executed and direct that it be filed.

13 Mr. Crosson, do you understand that you have the
14 right to be represented by counsel at every stage of these
15 proceedings, including your sentencing, and if you could not
16 afford counsel, you have a right to have counsel appointed on
17 your behalf?

18 THE DEFENDANT: Yes.

19 THE COURT: Ms. Leddy, do you or any member of your
20 office represent anyone, including codefendants, who might be
21 interested in the outcome of this matter?

22 MS. LEDDY: No, Your Honor.

23 THE COURT: Mr. Crosson, let me ask you about the
24 representation that you've received. Do you believe that
25 you've had adequate time to discuss your case fully with

1 Ms. Leddy?

2 THE DEFENDANT: Yes.

3 THE COURT: Has she been able to answer your
4 questions about how best to proceed in this case?

5 THE DEFENDANT: Yes.

6 THE COURT: Is there anything your lawyer has not
7 done which you have asked her to do?

8 THE DEFENDANT: No.

9 THE COURT: Are you completely satisfied with the
10 legal advice that you have received from Ms. Leddy?

11 THE DEFENDANT: Yes.

12 THE COURT: Ms. Leddy, during the time that you
13 represented Mr. Crosson, has he been cooperative with you?

14 MS. LEDDY: Yes, Your Honor.

15 THE COURT: Have you had adequate time to discover
16 the government's case?

17 MS. LEDDY: We have, Your Honor.

18 THE COURT: Have you had adequate time to consider
19 the possible defenses to the charge?

20 MS. LEDDY: Yes, Your Honor.

21 THE COURT: Do you know of any viable defense to the
22 charges contained in Counts 1 and 2 of the original indictment?

23 MS. LEDDY: No, Your Honor.

24 THE COURT: Have you had adequate time to consider
25 the possible sentences that may be imposed upon your client?

1 MS. LEDDY: Yes, Your Honor.

2 THE COURT: Have you discussed all of those issues
3 with your client, Mr. Crosson?

4 MS. LEDDY: I have, yes.

5 THE COURT: Thank you.

6 Mr. Moulton, Ms. Leddy, we have a plea agreement in
7 this case.

8 Mr. Moulton, would you summarize the contents of the
9 plea agreement for the Court.

10 MR. MOULTON: Yes, Your Honor. The plea letter is
11 dated April 13th, 2023, at the top left. Our plea letters are
12 probably different than yours, so ours are broken into letter
13 A1 is the -- Mr. Crosson will enter a plea of guilty to Counts
14 1 and 2 of the indictment at Case Number 3:23-CR-6 which
15 charges him with 18 USC 115(a)(1)(B), 115(b)(4), that's Count
16 1, and then Count 2 charges him with 18, United States Code,
17 875(c).

18 And paragraph A2 states that within 40 days he will
19 have to deposit a special assessment of \$200 in the form of
20 cash, check, or money order payable to the US District Court
21 clerk.

22 Paragraph A3 is the waiver of appeal rights, which
23 Robert Crosson agrees to waive his right to appeal his
24 conviction and sentence under 28 USC 1291 or 18 USC Section
25 3742 subject to following exceptions: If the United States

1 appeals from this sentence, Robert F. Crosson may take a direct
2 appeal from the sentence, and if, one, the sentence exceeds the
3 applicable statutory limits set forth in the United States Code
4 or, two, the sentence unreasonably exceeds the guideline range
5 determined by the Court under the sentencing guidelines,
6 Mr. Crosson may take a direct appeal. He further waives his
7 right to file a motion to vacate under 28 USC 2255.

8 And nothing in these waivers shall preclude the
9 defendant from raising ineffective assistance of counsel in the
10 appropriate forum and if otherwise permitted by law. And the
11 defendant understands that the government retains its right to
12 oppose any such claim on procedural or substantive grounds.

13 A4 is in the event that the judgment of conviction
14 and sentence entered does not remain in full force and effect
15 for any reason, the government may reinstate any charges
16 dismissed or reduced pursuant to this plea agreement. And he
17 agrees that he waives any claim of double jeopardy, statute of
18 limitations, speedy trial, or other similar objections.

19 Section B of the plea agreement is what the United
20 States Attorney for the Western District of Pennsylvania agrees
21 to. The United States Attorney retains the right of allocution
22 at the time of sentencing.

23 B2 is that the United States recommends that three
24 levels -- sorry. Recommends a two-level downward for 3E1.1.
25 And B3, the United States Attorney will take any position --

1 the acting US Attorney right now will take any position he
2 deems appropriate.

3 Section C1 and C2 are the penalties for each count.
4 You want me to go into detail?

5 THE COURT: How do you want to do your summary,
6 Mr. Moulton? You can summarize as you see fit.

7 MR. MOULTON: That's fine. I'll pass.

8 C3 is the stipulation of the agreed facts. On
9 February 20th, 2022, Robert F. Crosson called the office of
10 United States Senator Joe Manchin located in Martinsburg, West
11 Virginia, in the Northern District of West Virginia. The call
12 was not answered, so Mr. Crosson left a voice mail message
13 stating, "Hey, you motherfucker, a bullet coming to your head
14 soon. Mr. Coal industry, how you doing? Build back better,
15 huh? Filibuster, huh? You're a fucking pig."

16 On May 2nd, 2022, special agents with the FBI
17 interviewed Mr. Crosson. During the interview, Mr. Crosson
18 admitted to making the call and leaving the voice mail message.
19 He acknowledged that he made the call while he was located in
20 the state of New York, thus the threat was transmitted in
21 interstate commerce. Mr. Crosson knowingly and willfully made
22 the call threatening Senator Manchin because he disagrees with
23 Senator Manchin and his political views and official actions;
24 thus, Mr. Crosson made threats with the intent to impede or
25 interfere with such while engaged in the performance of

1 official duties and with intent to retaliate against such on
2 account of the performance of official duties. Senator Manchin
3 reasonably perceived the threat as a true threat. After the
4 meeting with the FBI, Mr. Crosson made no further threats.

5 Section C4 is the Rule 11(c)(1)(C) agreement between
6 the parties where we've agreed that with his guilty plea,
7 Mr. Crosson should be sentenced to one year of probation, no
8 fine, and a special assessment of \$200. That's for each count,
9 and they should run concurrently.

10 The parties further agree that no enhancements or
11 departures or variances are applicable or appropriate.

12 C5 is the guideline calculation we've agreed to,
13 which results in an offense level of six.

14 C6 is the parties agree that Mr. Crosson has no
15 criminal history points, and therefore criminal history
16 category of I. This agreement is not binding on the Court.

17 The last paragraph, the offense level is not binding
18 on the Court either, Your Honor. I missed that part.

19 C7, this agreement does not preclude the government
20 from pursuing any civil or administrative remedies.

21 And C8 is that if the -- after this plea agreement is
22 signed and prior to sentencing, if the defendant commits any
23 additional offenses, breaches the terms of this agreement, then
24 the United States may be released from its obligations under
25 this agreement and the defendant's guilty plea, if entered,

1 will stand. In that event, the United States will be entitled
2 to seek a sentence other than the agreed upon and reinstate any
3 previously dismissed or reduced charges and pursue additional
4 charges. And, again, the defendant waives any claim of double
5 jeopardy, statute of limitations, speedy trial. And any
6 alleged breach of this plea agreement shall be determined by
7 agreement of the parties or the Court. That's it, Your Honor.

8 THE COURT: Thank you, Mr. Moulton.

9 Ms. Leddy, did Mr. Moulton provide a fair summary of
10 the entire agreement?

11 MS. LEDDY: Yes, Your Honor.

12 THE COURT: Mr. Crosson, do you understand what this
13 agreement does?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand what this agreement
16 requires of you?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you have any questions about your plea
19 agreement?

20 THE DEFENDANT: I do not.

21 THE COURT: I'd like you to take a look at the plea
22 agreement.

23 Mr. Moulton, do you have the original plea agreement
24 there? Would you tender that to Ms. Leddy for me, please.

25 Mr. Moulton [sic], I'd like you to take a look at the

1 plea agreement that was just handed to your attorney and now
2 you're looking at it. First of all, on the sixth and last page
3 there's a signature line that appears to bear your signature.
4 So, sir, is that your signature on the last page?

5 THE DEFENDANT: Yes.

6 THE COURT: Now, normally in this district we have
7 the defendant sign each of the pages of the plea agreement and
8 their counsel sign them. That didn't occur, but that's okay.
9 I just want you to confirm that you have read each of the pages
10 of the plea agreement.

11 THE DEFENDANT: I have.

12 THE COURT: And I want you to confirm that you have
13 read each of the paragraphs of the plea agreement.

14 THE DEFENDANT: I have.

15 THE COURT: And all six pages; is that correct?

16 THE DEFENDANT: Correct.

17 THE COURT: Now, were each of the paragraphs of the
18 plea agreement discussed with you prior to your reaching an
19 agreement with the government?

20 THE DEFENDANT: Yes, they were.

21 THE COURT: Now, do you understand that this is a
22 binding plea, meaning that you have agreed to -- as to each of
23 the Counts 1 and 2 to be sentenced to a term of probation for
24 one year, no fine, and a special assessment of \$200?

25 THE DEFENDANT: Correct.

1 THE COURT: Do you also understand that you've agreed
2 that the sentence of probation imposed for Counts 1 and 2 shall
3 run concurrently?

4 THE DEFENDANT: Correct.

5 THE COURT: Now, do you understand that because this
6 is a binding plea agreement, the sentencing court may accept
7 the plea agreement, reject it, or defer a decision until it has
8 reviewed the presentence report that will be prepared in your
9 case, and if the Court does not accept the plea, you will have
10 the right to withdraw your plea of guilty?

11 THE DEFENDANT: Correct.

12 THE COURT: Do you understand that under a concept
13 known as relevant conduct, the Court may take into account any
14 conduct, circumstances, and injuries relevant to the crime to
15 which you are pleading guilty?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that under the terms of
18 the plea agreement, you and the government have stipulated and
19 agreed that the total relevant conduct of the defendant with
20 regard to the original indictment is the information as set
21 forth in paragraph C3. And I'd like you to take a look at that
22 right now. That's starting at the bottom of page 3, paragraph
23 C3, and do you see where it starts, "The parties hereby
24 stipulate and agree the following facts"?

25 THE DEFENDANT: Yes.

1 THE COURT: I'd like you to read that, and it
2 continues on to page 4 and it ends before paragraph --
3 subparagraph four. Do you see that, sir?

4 THE DEFENDANT: Yes.

5 THE COURT: Have you read that stipulation, sir?

6 THE DEFENDANT: I have.

7 THE COURT: And you've agreed to the accuracy of that
8 stipulation?

9 THE DEFENDANT: I have.

10 THE COURT: Do you understand that the Court is not
11 bound by this stipulation, and if the Court does not accept
12 this stipulation, you do not have the right to withdraw your
13 guilty plea?

14 THE DEFENDANT: I do.

15 THE COURT: Sir, does the written plea agreement
16 represent the complete agreement between you and the
17 government?

18 THE DEFENDANT: It does.

19 THE COURT: Is there anything that you and the
20 government have agreed to that is not contained in that written
21 document?

22 THE DEFENDANT: No.

23 THE COURT: Mr. Crosson, do you want me to accept the
24 plea agreement?

25 THE DEFENDANT: Yes.

1 THE COURT: I find that the defendant, Mr. Crosson,
2 understands and agrees with the terms contained in the plea
3 agreement. I order the original plea agreement to be filed as
4 part of the record in this case.

5 Ms. Leddy, would you tender the original plea
6 agreement to the clerk of the court for me. Thank you.

7 Mr. Crosson, have you received a copy of the original
8 indictment filed against you?

9 THE DEFENDANT: Yes.

10 THE COURT: Have you had an opportunity to read the
11 original indictment?

12 THE DEFENDANT: Yes.

13 THE COURT: Would you like me to read the original
14 indictment to you, or will you waive reading of the original
15 indictment in open court?

16 THE DEFENDANT: One more time.

17 THE COURT: Do you want me to read it to you, or will
18 you waive reading the indictment in open court?

19 THE DEFENDANT: Waive reading.

20 THE COURT: Thank you, sir.

21 You are pleading to Count 1 of the original
22 indictment which charges you with influencing a federal
23 official by threat in violation of Title 18, United States
24 Code, Section 115(a)(1)(B) and 115(b)(4). You are also
25 pleading to Count 2 of the original indictment which charges

1 you with threat by interstate communication in violation of
2 Title 18, United States Code, Section 875(c).

3 Mr. Crosson, how do you plead to the charge contained
4 in Count 1 of the original indictment?

5 THE DEFENDANT: Guilty.

6 THE COURT: Mr. Crosson, how do you plead to the
7 charge contained in Count 2 of the original indictment?

8 THE DEFENDANT: Guilty.

9 THE COURT: Now, before I accept your plea, I want to
10 make sure that there is a factual basis for your plea, that you
11 understand the nature of the charge against you and the
12 consequences of pleading guilty to those charges, that you
13 understand the constitutional and other legal rights you will
14 give up by pleading guilty, and that you are pleading guilty
15 voluntarily.

16 THE DEFENDANT: Yes.

17 THE COURT: Sir, you are charged in Count 1 with
18 influencing a federal official by threat in violation of Title
19 18, United States Code, Section 115(a)(1)(B) and 115(b)(4).
20 Now, Title 18, United States Code, Section 115(a)(1)(B) states
21 in its pertinent part as follows: Whoever threatens to
22 assault, kidnap, or murder a United States official, a United
23 States judge, a federal law enforcement officer, or an official
24 whose killing would be a crime under such section with the
25 intent to impede, intimidate, or interfere with such official,

1 judge, or law enforcement officer while engaged in the
2 performance of official duties or with the intent to retaliate
3 against such official judge or law enforcement officer on
4 account of the performance of official duties shall be punished
5 as provided for in Subsection (b).

6 Title 18, United States Code, Section 115(b)(4)
7 provides for penalties for violation of this section which
8 provides as follows: A threat made in violation of this
9 section shall be punished by a fine under this title or
10 imprisonment for a term of not more than ten years or both,
11 except that imprisonment for a threatened assault shall not
12 exceed six years.

13 Mr. Crosson, do you understand the statutes under
14 which you've been charged as to Count 1?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, if the government had to go to trial
17 in this case, the government would have to prove the following
18 elements of Title 18, United States Code, Section 115(a)(1)(B)
19 against you beyond a reasonable doubt: First, you threatened
20 to assault or murder a person; second, at the time of the
21 alleged threat, the threatened person was a United States
22 official; and third, you acted with the intent to impede,
23 intimidate, or interfere with such official while the official
24 was engaged in the performance of official duties or with the
25 intent to retaliate against such official on account of the

1 performance of official duties.

2 Mr. Crosson, do you understand the elements of the
3 statute under which you've been charged as to Count 1?

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Crosson, considering those
6 definitions, do you consider yourself to be guilty of violating
7 Title 18, United States Code, Section 115(a)(1)(B)?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, you are also charged in Count 2 with
10 threat by interstate communication in violation of Title 18,
11 United States Code, Section 875. Title 18, United States Code,
12 Section 875(c) states in its pertinent part as follows:
13 Whoever transmits in interstate or foreign commerce any
14 communication containing any threat to kidnap any person, or
15 any threat to injure the person of another, shall be fined
16 under this title or imprisoned not more than five years or
17 both.

18 Sir, do you understand the statute under which you've
19 been charged in Count 2 of the indictment?

20 THE DEFENDANT: Yes.

21 THE COURT: If the government had to go to trial in
22 this case, the government would have to prove the following
23 elements of Title 18, United States Code, Section 875(c)
24 against you beyond a reasonable doubt: First, you knowingly
25 transmitted a communication in interstate or foreign commerce;

1 second, you subjectively intended the communication as a
2 threat; and third, the content of the communication contained a
3 true threat to kidnap or injure the person of another.

4 Sir, do you understand the elements of the statute
5 under which you've been charged as to Count 2?

6 THE DEFENDANT: Yes.

7 THE COURT: Considering those definitions, sir, do
8 you consider yourself to be guilty of violating Title 18,
9 United States Code, Section 875(c)?

10 THE DEFENDANT: Yes.

11 THE COURT: Thank you.

12 Mr. Moulton, would you present your witness or
13 proffer as to what the government would have been able to prove
14 in this case.

15 MR. MOULTON: I'll proffer the same factual basis
16 that I read in the plea agreement.

17 THE COURT: So you're proffering the relevant conduct
18 stipulation as contained in paragraph 3C?

19 MR. MOULTON: Yes, Your Honor.

20 THE COURT: Or C3, as the case may be.

21 All right. Ms. Leddy, the government is proffering
22 as its factual basis the relevant conduct stipulation as
23 contained in paragraph C3 on page 3 and continuing to page 4 of
24 the plea agreement. Do you have any objection to the
25 government's proffer and the use of the relevant conduct

1 stipulation as such?

2 MS. LEDDY: No objection, Your Honor.

3 THE COURT: Mr. Crosson, do you have any objection to
4 the government's proffer as stated in your plea agreement in
5 paragraph C3 beginning on page 3 and continuing to page 4?

6 THE DEFENDANT: No.

7 THE COURT: By way of that proffer, Mr. Crosson, is
8 the evidence the government attorney just presented
9 substantially correct?

10 THE DEFENDANT: Correct.

11 THE COURT: Did the government's proffer accurately
12 involve [sic] your involvement in what occurred?

13 THE DEFENDANT: Correct.

14 THE COURT: Mr. Crosson, I need you to explain to me
15 what you did that makes you guilty of influencing a federal
16 official by threat in violation of Title 18, United States
17 Code, Section 115(a)(1)(B).

18 THE DEFENDANT: I threatened Joe Manchin with a
19 bullet.

20 THE COURT: All right. And at the time of your
21 threat, you knew that Mr. Manchin was a United States senator?

22 THE DEFENDANT: I did.

23 THE COURT: And what was the purpose for threatening
24 him?

25 THE DEFENDANT: I was very angry with him.

1 THE COURT: On account of his acting in an official
2 capacity in performing his official duties?

3 THE DEFENDANT: Yes.

4 THE COURT: And this act occurred on or about
5 February 9, 2022, at or near Berkeley, in the Northern --
6 County, in the Northern District of West Virginia?

7 THE DEFENDANT: Correct.

8 THE COURT: All right, sir. Would you explain to me
9 what you did that makes you guilty of threat by interstate
10 communication in violation of Title 18, United States Code,
11 Section 875(c).

12 THE DEFENDANT: I called and left a voice mail.

13 THE COURT: So you used a telephone communication to
14 make that threat; is that correct, sir?

15 THE DEFENDANT: Yes.

16 THE COURT: And it was your intent to make a threat
17 by that communication; is that correct?

18 THE DEFENDANT: Yes.

19 THE COURT: And as you indicated, that threat
20 contained a threat to -- "a bullet coming to your head soon."

21 THE DEFENDANT: Correct.

22 THE COURT: All right. And as to this act, again,
23 that occurred on or about February 9, 2022, at or near Berkeley
24 County, in the Northern District of West Virginia?

25 THE DEFENDANT: Yes.

1 THE COURT: Ms. Leddy, again, are you satisfied that
2 if this case went to trial, there would be no meritorious legal
3 defense to the charges?

4 MS. LEDDY: Yes, Your Honor. I would just like to
5 make one notation. The plea agreement refers to the date of
6 February 20th, 2022, in the relevant conduct stipulation
7 paragraph. The indictment has the February 9th date, 2022.

8 THE COURT: Well, which one is correct? I would hope
9 that the February 9th date is the correct date.

10 MR. MOULTON: That's what I believe, Your Honor. I
11 can -- if I can pull my --

12 THE COURT: Let's figure that out, because one of the
13 two of them is going to have to be changed, and I can't change
14 the indictment. I can potentially have you modify the plea
15 agreement and the relevant conduct to provide the proper date.

16 MR. MOULTON: Could I have -- call someone real
17 quick?

18 THE COURT: Sure. Let's take a brief recess until we
19 figure that out.

20 Thank you for bringing that to our attention,
21 Ms. Leddy.

22 (Recess taken, 11:43 to 11:48 a.m.)

23 THE COURT: We took a brief recess because Ms. Leddy
24 pointed out to the Court that there was an inconsistency as to
25 the date that the call and the threats were made as alleged in

1 the indictment with the relevant conduct stipulation as set
2 forth in the plea agreement.

3 Have we confirmed which date is accurate, either
4 February the 9th or February the 20th?

5 MR. MOULTON: Your Honor, we're changing the date in
6 the factual basis of the plea agreement to on or about
7 February 9th, 2022.

8 THE COURT: All right. And so have we been -- have
9 we taken a look at the original plea agreement that was
10 originally handed to the clerk?

11 MS. LEDDY: We have, and we have all signed it, Your
12 Honor.

13 THE COURT: Everybody's signed it, initialed that
14 change, and changed it from February the 20th to February the
15 9th; is that correct?

16 MS. LEDDY: That's correct, Your Honor.

17 THE COURT: All right. Thank you.

18 All right. Mr. Crosson, with that in mind -- with
19 that in mind, the acts that are alleged to have occurred in the
20 indictment and for which there's been a relevant conduct
21 stipulation and to which you've indicated have occurred through
22 your testimony all occurred on or about February 9th, 2022, at
23 or near Berkeley County, in the Northern District of West
24 Virginia; is that correct, sir?

25 THE DEFENDANT: Correct.

1 THE COURT: All right. Thank you.

2 And again, as to where we were before, Ms. Leddy, now
3 are you satisfied if this case went to trial, there would be no
4 meritorious legal defense to the charge?

5 MS. LEDDY: Yes, I'm satisfied, Your Honor.

6 THE COURT: And are you satisfied that Mr. Crosson's
7 constitutional and other rights have been observed fully?

8 MS. LEDDY: Yes, Your Honor.

9 THE COURT: And do you concur in his now-stated
10 intention to enter a plea of guilty to this charge?

11 MS. LEDDY: Yes, Your Honor.

12 THE COURT: Thank you.

13 Mr. Crosson, I find that there is a sufficient
14 factual basis for your plea of guilty.

15 Sir, do you understand that you are pleading guilty
16 to felony offenses, and if your plea is accepted, you will be
17 adjudged guilty of those felony offenses?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you also understand that such judgment
20 may deprive you of valuable civil rights, such as your right to
21 vote, your right to hold public office, your right to serve on
22 a jury, and your right to possess a firearm or gun of any kind?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you discussed the statutory
25 penalties that you are facing?

1 THE DEFENDANT: Yes.

2 THE COURT: And you understand as to Count 1 you
3 expose yourself to a maximum penalty of a term of imprisonment
4 of not more than ten years for a threat to kidnap or murder,
5 imprisonment for not more than six years for a threat of
6 assault, a fine of not more than \$250,000, a term of supervised
7 release of not more than three years, and a special assessment
8 under Title 18, United States Code, Section 3013 of \$100?

9 THE DEFENDANT: Yes.

10 THE COURT: Mr. Moulton, is there any mandatory
11 minimum sentence that the defendant exposes himself to by
12 pleading guilty to Count 1?

13 MR. MOULTON: There is a mandatory minimum of one
14 year probation, if there's a probationary sentence. There's
15 a -- if there's a probationary sentence, there's a mandatory
16 minimum of one year for probation. There's no other mandatory
17 minimums.

18 THE COURT: All right.

19 Mr. Crosson, there is a mandatory minimum component
20 of your sentence, and that is that if a sentence of probation
21 is given, then you serve a mandatory minimum of one year of
22 probation. Do you understand that, sir?

23 THE DEFENDANT: Correct.

24 THE COURT: And knowing that there's a mandatory
25 minimum component of the sentence that you may receive, does

1 that change your decision to enter into this plea agreement?

2 THE DEFENDANT: No.

3 THE COURT: All right. Thank you.

4 Now, as to Count 2, you understand that you expose
5 yourself to a maximum penalty of a term of imprisonment of not
6 more than five years, a fine of not more than \$250,000, and a
7 term of supervised release of not more than three years and a
8 special assessment under Title 18, United States Code, Section
9 3013 of \$100. You understand that?

10 THE DEFENDANT: Correct.

11 THE COURT: Now, Mr. Moulton, as to this charge, is
12 there a mandatory minimum sentence that the defendant could
13 expose himself to by pleading guilty to Count 2?

14 MR. MOULTON: The same, one year of probation if it's
15 a probationary sentence, Your Honor.

16 THE COURT: All right. Mr. Crosson, there's a
17 mandatory minimum component to this sentence that you may
18 receive, and that is that if you are sentenced to probation,
19 you'd be sentenced to a mandatory minimum of one year
20 probation. Do you understand that, sir?

21 THE DEFENDANT: Correct.

22 THE COURT: Knowing that there's a mandatory minimum
23 component, does that change your decision to enter into this
24 plea?

25 THE DEFENDANT: It does not.

1 THE COURT: And you understand that supervised
2 release means that after imprisonment, you will be supervised
3 by the probation office under conditions that will be set by
4 this Court?

5 THE DEFENDANT: Correct.

6 THE COURT: You understand that if you violate the
7 terms of your supervised release, the Court can revoke the term
8 of your supervised release and order you to serve a term in
9 prison?

10 THE DEFENDANT: Correct.

11 THE COURT: You understand that you will be required
12 to pay a special assessment of \$200 for having been convicted
13 of two felony offenses?

14 THE DEFENDANT: Correct.

15 THE COURT: And you understand that you've agreed as
16 a condition of your plea agreement to pay this special
17 assessment within 40 days following the entry of your plea?

18 THE DEFENDANT: Yes.

19 THE COURT: Sir, do you understand that as part of
20 your fine, you could be required to pay the cost of
21 incarceration and/or the cost of supervision upon release?

22 THE DEFENDANT: Correct.

23 THE COURT: Have you discussed those costs with
24 Ms. Leddy?

25 THE DEFENDANT: Yes.

1 THE COURT: Then you understand that it now costs
2 \$3,688 per person per month for prison, \$371 per month per
3 person for supervised release, and \$2,980 per month per person
4 for a residential reentry center?

5 THE DEFENDANT: Yes.

6 THE COURT: Sir, do you understand that the Court has
7 the authority to order restitution in your case?

8 THE DEFENDANT: Yes.

9 THE COURT: And if applicable, do you understand that
10 the government may seek forfeiture in your case?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand, sir, that by pleading
13 guilty, if you are not a citizen of the United States, you may
14 be removed from the United States, denied citizenship, and
15 denied admission to the United States in the future?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, sir, do you understand that even
18 though this is a binding plea agreement, the sentencing
19 guidelines may still play an important role in your case,
20 because the Court can only accept a plea agreement containing a
21 specific sentence if it determines that the sentence is
22 appropriate under the United States Sentencing Guidelines?

23 THE DEFENDANT: Yes.

24 THE COURT: Have you and Ms. Leddy discussed the
25 application of the US Sentencing Guidelines to your case?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that the Court may
3 defer deciding whether to accept the plea agreement in your
4 case until after the presentence investigation report has been
5 completed?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you understand that both you and the
8 government will have an opportunity to object to the
9 presentence report?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that parole has been
12 abolished and that you will not be released on parole if you
13 are sentenced to prison?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Crosson, do you understand that in
16 your plea agreement, you have agreed to give up your right to
17 appeal your sentence under many circumstances?

18 THE DEFENDANT: Yes.

19 THE COURT: Sir, everyone found guilty of a crime in
20 federal court in this district has the right to appeal their
21 conviction and sentence to the Fourth Circuit Court of Appeals
22 in Richmond, Virginia. In Richmond, a three-judge panel
23 reviews the conviction and sentence to see if it was done
24 correctly.

25 Do you understand that pursuant to paragraph A3 of

1 your plea agreement that you have waived your right to take a
2 direct appeal from the defendant's conviction or sentence under
3 Title 28, United States Code, Section 1291, or Title 18, United
4 States Code, Section 3742 subject to the following exceptions:
5 If the United States appeals from the sentence, Robert F.
6 Crosson may take a direct appeal from the sentence and, B, if,
7 one, the sentence exceeds the applicable statutory limits set
8 forth in the United States Code or, two, the sentence
9 unreasonably exceeds the guideline range determined by the
10 Court under the sentencing guidelines, Robert F. Crosson may
11 take a direct appeal from the sentence?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that you only have the
14 right to appeal your guilty plea subject to those exceptions if
15 you believe it was unlawful or involuntary or that there was
16 some other fundamental defect in the proceeding that was not
17 waived in the plea agreement itself?

18 THE DEFENDANT: Yes.

19 THE COURT: However, you agree that your guilty plea
20 today is lawful and voluntary and that that there has been no
21 fundamental defect in the proceedings that you're aware of; is
22 that correct, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you also understand that everyone has
25 the right to challenge their conviction or sentence or the

1 manner in which it was determined in any postconviction
2 proceeding, sometimes called a habeas corpus petition or
3 collateral attack, under Title 28, United States Code, Section
4 2255?

5 THE DEFENDANT: Yes.

6 THE COURT: Do you understand that you have waived
7 the right to file a motion to vacate sentence under Title 28,
8 United States Code, Section 2255 attacking your conviction or
9 sentence and the right to file any other collateral proceeding
10 attacking your conviction or sentence?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that your only legal
13 remedies on appeal or collateral attack are for claims of
14 ineffective assistance of counsel or prosecutorial misconduct?

15 THE DEFENDANT: Yes.

16 THE COURT: However, you agree that there is
17 currently no known evidence of ineffective assistance of
18 counsel or prosecutorial misconduct; is that correct?

19 THE DEFENDANT: Correct.

20 THE COURT: Have you discussed the waiver of these
21 important appellate rights with your attorney, Ms. Leddy?

22 THE DEFENDANT: I have.

23 THE COURT: Having done so, do you still wish to
24 waive these rights, sir?

25 THE DEFENDANT: I do not.

1 THE COURT: You do not wish to --

2 THE DEFENDANT: I do.

3 THE COURT: All right. Do you still wish to waive
4 your appellate rights as set forth in your plea agreement, sir?

5 THE DEFENDANT: Yes. Sorry about that.

6 THE COURT: Thank you.

7 Ms. Leddy, do you believe that the defendant fully
8 understands the importance of the rights he is waiving?

9 MS. LEDDY: Yes, Your Honor.

10 THE COURT: Mr. Crosson, should you find some basis
11 on which to file an appeal, with few exceptions, any notice of
12 appeal must be filed within 14 days of judgment being entered
13 in your case. Do you understand that, sir?

14 THE DEFENDANT: Yes.

15 THE COURT: Mr. Crosson, I find that you understand
16 the nature of the charge and the consequences of a guilty plea
17 to the charge.

18 Now, sir, do you understand that you have the right
19 to continue to plead not guilty to these charges?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: Do you also understand that by pleading
22 guilty, you give up your right to a speedy and public trial by
23 a jury?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Do you understand that by pleading

1 guilty, you give up your right to force the government to come
2 forward with witnesses and evidence against you?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: Sir, do you understand that you would
5 have been presumed innocent until the government presented
6 enough evidence to satisfy both a judge and a jury beyond a
7 reasonable doubt of your guilt?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Do you understand that when you admit
10 your guilt, as you have here, you relieve the government of the
11 burden of proving your guilt?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: Do you understand that you would have the
14 right to the assistance of counsel at trial?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that you and your
17 attorney, Ms. Leddy, would have had the right to confront and
18 cross-examine your accusers and to test the truth of what they
19 said?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you understand that by pleading
22 guilty, you give up that right?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that had you desired to
25 go to trial and wished to call witnesses, that you would have

1 been entitled to the services of the US Marshal to bring
2 witnesses to court under subpoena?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand that by pleading
5 guilty, you give up your right to call witnesses except at your
6 sentencing hearing?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that you would have the
9 right to move to suppress, or keep away from the jury's hearing
10 and consideration, any evidence of any nature that had been
11 illegally or unlawfully obtained?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that had you desired to
14 go to trial, that you would have the right to testify at trial?

15 THE DEFENDANT: Yes.

16 THE COURT: However, you understand that you could
17 not have been compelled or forced to testify at trial?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that you would have the
20 right to go to trial and remain silent, that is, not to take
21 the witness stand or call any witnesses or present any evidence
22 whatsoever on your own behalf?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that the Court would
25 have instructed the jury that they could not convict you

1 because you'd exercised your constitutional right to remain
2 silent, but could only base their decision on an offer of proof
3 from the government?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that you give up your
6 right to a unanimous verdict from a jury?

7 THE DEFENDANT: Yes.

8 THE COURT: Ms. Leddy, do you believe that
9 Mr. Crosson understands the consequences of his guilty plea?

10 MS. LEDDY: Yes, Your Honor.

11 THE COURT: Mr. Crosson, I find that you understand
12 the constitutional and other legal rights you are giving up by
13 pleading guilty.

14 Mr. Crosson, knowing all of those things, do you
15 still wish to plead guilty at this time?

16 THE DEFENDANT: Yes.

17 THE COURT: Has any person forced you, threatened
18 you, coerced you, intimidated you, or talked you into entering
19 a guilty plea against your will?

20 THE DEFENDANT: No.

21 THE COURT: Are you acting voluntarily and of our own
22 free will in entering this guilty plea?

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Crosson, are you pleading guilty
25 because you are guilty of the crimes charged in Counts 1 and 2

1 of the original indictment?

2 THE DEFENDANT: Yes.

3 THE COURT: Sir, has anyone promised you or told you
4 something that is different from what I have told you today to
5 get you to plead guilty?

6 THE DEFENDANT: No.

7 THE COURT: Is your plea the result of any promises
8 other than those promises specifically contained in your
9 written plea agreement?

10 THE DEFENDANT: No.

11 THE COURT: Are you pleading guilty to protect
12 anyone, sir?

13 THE DEFENDANT: No.

14 THE COURT: Has anyone promised or predicted the
15 exact sentence which will be imposed upon you in this matter?

16 THE DEFENDANT: Pardon me?

17 THE COURT: Has anyone promised or predicted the
18 exact sentence which will be imposed upon you in this matter?

19 THE DEFENDANT: Yes.

20 THE COURT: Well, there's a binding plea, but has
21 anybody promised that's what the Court's going to do?

22 THE DEFENDANT: No. Thank you.

23 THE COURT: So let's do that again.

24 Has anyone promised or predicted the exact sentence
25 which will be imposed upon you in this matter?

1 THE DEFENDANT: No.

2 THE COURT: Do you understand that at this time, no
3 one could know the exact sentence which will be imposed in your
4 case?

5 THE DEFENDANT: Correct.

6 THE COURT: Mr. Crosson, have you been able to fully
7 understand what is going on in these proceedings today?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Crosson, I find that your guilty plea
10 is voluntary.

11 Now, again, sir, at this time do you have any
12 questions or second thoughts about entering a plea of guilty to
13 these charges?

14 THE DEFENDANT: No.

15 THE COURT: Would you please stand for me.

16 How do you plead to Count 1 of the original
17 indictment charging you with influencing a federal official by
18 threat?

19 THE DEFENDANT: Guilty.

20 THE COURT: How do you plead to Count 2 of the
21 original indictment charging you with threat by interstate
22 communication?

23 THE DEFENDANT: Guilty.

24 THE COURT: Thank you. Please be seated.

25 In the case of United States versus Robert F.

1 Crosson, I find that Mr. Crosson is fully competent and capable
2 of entering into an informed plea. I find that there is a
3 sufficient factual basis for his plea of guilty. I find that
4 Mr. Crosson understands the nature of the charge and the
5 consequences of a guilty plea to the charge. I find that
6 Mr. Crosson understands the constitutional and other legal
7 rights he is giving up because of his plea. And I find that
8 Mr. Crosson's plea is voluntary.

9 While I defer accepting the terms of the plea
10 agreement and adjudging the defendant guilty to the sentencing
11 court, I do accept the plea of guilty to Counts 1 and 2 of the
12 original indictment.

13 Mr. Crosson, the sentencing court must consider the
14 following factors when determining the sentence that you will
15 receive: The nature and circumstances of the offense; your
16 history and characteristics; the necessity of punishing you,
17 deterring you, protecting the public from you, or providing you
18 with training, medical care, or other treatment; the kinds of
19 sentences and the sentencing range established by the
20 sentencing guidelines; the need to give defendants with similar
21 criminal records similar sentences; and the need to provide
22 restitution to any victims of the offense.

23 In order to help the Court consider these factors,
24 the probation office is required to conduct a presentence
25 investigation of you and submit a report to the sentencing

1 court. The information in this report might have an impact
2 upon any sentence that you ultimately receive. I strongly
3 encourage you to discuss this process and your participation in
4 the same with your attorney Ms. Leddy.

5 Now, sir, understand that you must not commit any
6 crimes between now and sentencing, because there are additional
7 punishments that may be imposed for committing additional
8 crimes. Do you understand?

9 THE DEFENDANT: Yes.

10 THE COURT: Pursuant to Section 6A1 of the United
11 States Sentencing Guidelines, I order the probation office to
12 conduct a presentence investigation of Mr. Crosson, prepare a
13 draft presentence investigation report, and disclose its
14 contents to the government and Mr. Crosson.

15 I further direct that the probation officer and all
16 parties comply with Federal Rule of Criminal Procedure 32 and
17 US Sentencing Guideline Section 6A1.2 regarding deadlines for
18 objection -- disclosure, objection, departure motion, or
19 sentencing statement requirements. The sentencing court will
20 set this matter for sentencing following receipt of the
21 presentence report.

22 Ms. Leddy, Mr. Moulton, if either of you anticipate a
23 lengthy sentencing hearing, please notify the sentencing court
24 in advance so that an adequate amount of time can be set aside
25 for that hearing.

1 Mr. Moulton, you may be not aware of it -- I know,
2 Ms. Leddy, you are -- that Judge Groh normally sets her
3 sentencings for approximately 45 minutes, so if you're
4 anticipating a longer period of time, you need to make those
5 arrangements with her chambers in advance.

6 MR. MOULTON: Understood, Your Honor.

7 MS. LEDDY: Thank you, Your Honor.

8 THE COURT: All right, counsel.

9 Anything further we need to address on behalf of the
10 government, Mr. Moulton?

11 MR. MOULTON: No, Your Honor.

12 THE COURT: Anything on behalf of Mr. Crosson,
13 Ms. Leddy?

14 MS. LEDDY: Nothing from the defense, Your Honor.

15 THE COURT: With that in mind, the defendant is
16 released pursuant to the order setting conditions of release
17 previously entered herein and we stand adjourned. Thank you.

18 (Proceedings concluded at 12:03 p.m.)

19

20

21

22

23

24

25

1 CERTIFICATE

2
3 I, Cindy L. Knecht, Registered Professional Reporter
4 and Official Reporter of the United States District Court for
5 the Northern District of West Virginia, do hereby certify that
6 the foregoing is a true and correct transcript to the best of
7 my ability of the taped proceedings had in the above-styled
8 action on June 9, 2023, as reported by me in stenotypy.

9 I certify that the transcript fees and format comply with
10 those prescribed by the Court and Judicial Conference of the
11 United States.

12 Given under my hand this 28th day of May 2024.

13 /s/Cindy L. Knecht

14 _____
15 Cindy L. Knecht, RMR/CRR
16 Official Reporter, United States
17 District Court for the Northern
18 District of West Virginia
19 - - -